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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 FREDRICK R. BOLDEN,) No. SA CV 10-00272-RSWL (VBK)
12)
13 Petitioner,) ORDER (1) ACCEPTING AND ADOPTING
14) THE REPORT AND RECOMMENDATION OF
15 v.) THE UNITED STATES MAGISTRATE
16) JUDGE, AND (2) DISMISSING THE
17 DERRALL G. ADAMS,) PETITION FOR WRIT OF HABEAS
18) CORPUS
19 Respondent.)
20 _____)
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22 Pursuant to 28 U.S.C. §636, the Court has made a de novo review
23 of the Petition for Writ of Habeas Corpus ("Petition"), Respondent's
24 Motion to Dismiss, all of the records herein and the Report and
25 Recommendation of the United States Magistrate Judge ("Report").
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1 **IT IS ORDERED** that: (1) the Court accepts and adopts the Report
 2 and Recommendation, (2) the Court declines to issue a Certificate of
 3 Appealability ("COA");¹ and (3) Judgment be entered denying and
 4 dismissing the Petition without prejudice.

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 6 DATED: October 25, 2010

RONALD S.W. LEW

RONALD S. W. LEW
 Senior, U.S. District Court Judge

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 15 ¹ Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability
 16 may issue "only if the applicant has made a substantial showing of the
 17 denial of a constitutional right." Here, the Court has adopted the
 18 Magistrate Judge's finding and conclusion that the Petition is
 19 unexhausted. Thus, the Court's determination of whether a Certificate
 20 of Appealability should issue here is governed by the Supreme Court's
 21 decision in Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000),
 22 where the Supreme Court held that, "[w]hen the district court denies
 a habeas petition on procedural grounds without reaching the
 prisoner's underlying constitutional claim, a COA should issue when
 the prisoner shows, at least, that jurists of reason would find it
 debatable whether the petition states a valid claim of the denial of
 a constitutional right and that jurists of reason would find it
 debatable whether the district court was correct in its procedural
 ruling." 529 U.S. at 484. As the Supreme Court further explained:

23 "Section 2253 mandates that both showings be made before the
 24 court of appeals may entertain the appeal. Each component
 25 of the § 2253(c) showing is part of a threshold inquiry, and
 26 a court may find that it can dispose of the application in
 a fair and prompt manner if it proceeds first to resolve the
 issue whose answer is more apparent from the record and
 arguments." Id. at 485.

27 Here, the Court finds that Petitioner has failed to make the
 28 requisite showing that "jurists of reason would find it debatable
 whether the district court was correct in its procedural ruling."